

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

TOP-CO CEMENTING PRODUCTS INC., TOP-CO INC., and TOP-CO CEMENTING PRODUCTS de MEXICO, S.A.	§	
	§	
	§	Civil Action No. _____
Plaintiffs,	§	
v.	§	JURY TRIAL REQUESTED
	§	
BLACKHAWK SPECIALTY TOOLS, LLC	§	
Defendant.	§	

**PLAINTIFFS TOP-CO INC. AND TOP-CO CEMENTING
PRODUCTS INC.'S ORIGINAL COMPLAINT FOR PATENT INFRINGEMENT**

Plaintiffs Top-Co Cementing Products Inc., Top-Co Inc., and Top-Co Cementing Products de Mexico, S.A. (collectively “Top-Co”) complain and allege as follows:

NATURE OF THE ACTION

1. This is an action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, *et seq.*

THE PARTIES

2. Plaintiff Top-Co Inc., a Canadian corporation, has its principle place of business at 7720 17 Street, Edmonton, Alberta Y6P 1S7.

3. Plaintiff Top-Co Cementing Products de Mexico, S.A., a Mexican corporation, has its principle place of business at Ave. Ejercito Nacional No. 418, Oficina #1007 & #1008 Piso 10, 11570 México, DF.

4. Plaintiff Top-Co Cementing Products Inc., a Texas Corporation, has a manufacturing facility at 1810 Banks Drive, Weatherford, Texas, 76087, and a principle place of business at Suite 200, 3443 N. Sam Houston Pkwy W, Houston, Texas, 77086. Top-Co is a

leading designer and manufacturer of casing equipment, and provides engineering support to help drilling and cementing engineers achieve long-term wellbore integrity.

5. Defendant Blackhawk Specialty Tools, LLC (“Blackhawk”) is a Texas Limited Liability Company having a principal place of business at 11936 Brittmore Park Dr., Houston, Texas, 77041. Blackhawk may be served through its registered agent C T Corporation System, 1999 Bryan Street, Suite 900, Dallas, Texas, 75201-3136.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

7. This Court has personal jurisdiction over Blackhawk because Blackhawk has conducted and conducts business in this District, has committed and continues to commit acts of patent infringement in this District, and has harmed and continues to harm Top-Co by making, using, offering to sell, or selling infringing products in this District, and inducing others to make, use, sell, offer to sell, or import infringing products in this District.

8. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and 1400(b).

COUNT I

INFRINGEMENT OF UNITED STATES PATENT NO. 7,182,131

9. Top-Co incorporates and re-alleges paragraphs 1 through 6 of this Complaint.

10. Top-Co is the owner by assignment and corporate merger of the entire right, title and interest, including the right to sue for past damages, of U.S. Patent No. 7,182,131 (“the ’131 Patent” or the “Patent-in-Suit”) under 35 U.S.C. §271. A true and correct copy of the ’131 Patent is attached hereto as Exhibit A.

11. The ’131 Patent duly and lawfully issued on February 27, 2007 entitled “Dual Diameter and Rotating Centralizer/Sub and Method” to Maximillian S. Gremillion of Missouri

City, Texas on an application filed Nov. 23, 2002, as a continuation in part of application No. 09/655,795 filed September 6, 2000 (which is now United States Pat. No. 6,484,803).

12. Blackhawk has infringed and continues to infringe one or more claims of the '131 patent in violation of 35 U.S.C. § 271. Blackhawk's acts of infringement include direct infringement by making, using, offering to sell, or selling its Integral Downhole Casing Centralizer and Sub in the United States, including in this District.

13. Blackhawk committed these acts of infringement without license or authorization.

14. Blackhawk directly infringed one or more claims of the '131 Patent, in violation of 35 U.S.C. §271(a), by, among other things, making, using, offering to sell, selling, and/or importing into the United States, without authority or license from Top-Co, said Integral Downhole Casing Centralizer and Sub that are within the scope of one or more claims of the '131 Patent.

15. Blackhawk induced the infringement of at least one claim of the '131 Patent, in violation of 35 U.S.C. §271(b), by, among other things, actively, knowingly and/or recklessly aiding and abetting others (including Blackhawk's customers and end users) through activities such as marketing said Integral Downhole Casing Centralizer and Sub, creating and/or distributing data sheets, application notes, and/or similar materials with instructions on using said Integral Downhole Casing Centralizer and Sub, with the specific intent to induce others to directly make, use, offer for sale, sell, and/or import into the United States, without license or authority, Blackhawk's Integral Downhole Casing Centralizer and Sub that fell within the scope of at least one claim of the '131 Patent. On information and belief, Blackhawk offered the Integral Downhole Casing Centralizer and Sub for lease or rent.

16. On information and belief, Blackhawk's past, present, and continuing infringement was and is deliberate and willful. Blackhawk knew or should have known of the high likelihood of infringement given, for example, Blackhawk's demonstrated interest in selling its assets or its entire business to Top-Co. Top-Co and Blackhawk are and have been competitors in the oil and gas services industry focusing on cementing and well construction technology. Due to Top-Co's reputation and due to the relatively few makers of downhole casing centralizers, Top-Co's products and their patented nature are well known in the oil and gas industry. Blackhawk gained knowledge of these products and their patented nature, at least, through its competitive position in the industry, trade publications, Top-Co's website where it identifies its casing centralizers as patented, and the parties' common participation in the patenting process, including the citation of Top-Co's '131 Patent application in Blackhawk's own patent application (*e.g.*, PCT/US2013/033104 citing US 2003/0070803 A1). Additionally, Blackhawk has not made changes to its Integral Downhole Casing Centralizer and Sub or provided end users with instructions regarding how to avoid infringement, despite Blackhawk's knowledge of the '131 Patent. This case is therefore an exceptional case, which warrants an award of treble damages and attorneys' fees to Top-Co pursuant to 35 U.S.C. § 285.

PRAYER FOR RELIEF

WHEREFORE, Top-Co prays for the following relief:

A. That Blackhawk be adjudged to have infringed the '131 Patent, directly or indirectly, literally or under the doctrine of equivalents;

B. That Blackhawk, its officers, directors, agents, servants, employees, attorneys, affiliates, divisions, branches, parents, and those persons in active concert or participation with any of them, be preliminarily and permanently restrained and enjoined from directly or indirectly infringing the '131 Patent;

C. That Blackhawk provide Top-Co an accounting of all gains, profits and advantages derived by Blackhawk's direct or indirect infringement of the '131 Patent and that Top-Co be awarded damages pursuant to 35 U.S.C. § 284 sufficient to compensate Top-Co for the Blackhawk's past infringement and any continuing or future infringement up until the date Blackhawk is finally and permanently enjoined from further infringement, including compensatory damages;

D. An assessment of pre-judgment and post-judgment interest and costs against Blackhawk, together with an award of such interest and costs, in accordance with 35 U.S.C. § 284;

E. That Blackhawk be directed to pay enhanced damages, including Top-Co attorneys' fees incurred in connection with this lawsuit pursuant to 35 U.S.C. § 285; and

F. That Top-Co have such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), Top-Co hereby demands a trial by jury on all issues triable to a jury.

Dated: July 11, 2014

Respectfully Submitted,

/s/ Steven P. Tepera

Steven P. Tepera, Attorney-in-Charge

Texas State Bar No. 24053510

Southern District Bar No. 1447190

Craig S. Jepson

Texas State Bar No. 24061364

Southern District Bar No. 965286

REED & SCARDINO LLP

301 Congress Avenue, Suite 1250

Austin, TX 78701

Tel. (512) 474-2449

Fax (512) 474-2622

stepera@reedscardino.com

cjepson@reedscardino.com

ATTORNEYS FOR PLAINTIFFS

**TOP-CO INC. AND TOP-CO CEMENTING
PRODUCTS INC.**